

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2007 No. 183**

Issued by the authority of the Minister for Employment and Workplace Relations

*Workplace Relations Act 1996*

*Workplace Relations Amendment Regulations 2007 (No. 2)*

Section 846 of the *Workplace Relations Act 1996* (the Act) provides (in part) that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

*Workplace Relations Amendment (A Stronger Safety Net) Act 2007* (the Safety Net Act) amended the Act to create a fairness test and establish the Workplace Ombudsman and the Workplace Authority Director as statutory office holders. It also created the Office of the Workplace Ombudsman and the Workplace Authority as statutory agencies.

The Safety Net Act repealed and replaced the disclosure of information provisions in sections 165 (in relation to workplace agreement officials) and 170 of the Act (in relation to workplace inspectors).

As a result of the Safety Net Act amendments, section 164A of the Act sets out when a workplace agreement official may disclose information acquired in the course of their duties. Subsection 164A (5) of the Act allows regulations to prescribe persons to whom a workplace agreement official may disclose prescribed kinds of information for prescribed purposes.

Similarly, as a result of the Safety Net Act amendments, section 166U sets out that a member of the Office of the Workplace Ombudsman (defined as the Workplace Ombudsman, staff assisting the Workplace Ombudsman and workplace inspectors) may disclose information acquired in the course of their duties. Subsection 166U(3) allows regulations to prescribe persons to whom a workplace agreement official may disclose prescribed kinds of information for prescribed purposes.

The Regulations would amend the existing *Workplace Relations Regulations 2006* and would allow a member of the Office of the Workplace Ombudsman or a workplace agreement official to disclose information to the Minister, the Secretary, an SES employee or an APS employee in order to brief or consider briefing the Minister for various purposes such as in relation to an issue that has been raised publicly to assist the Minister to respond to the issue.

In addition, the Regulations would confer additional powers on workplace inspectors to investigate alleged breaches of section 34 of the *Independent Contractors Act 2006*. These powers would be identical to those exercisable by workplace inspectors when investigating alleged breaches of the Act.

The Safety Net Act amendments also require the Workplace Authority Director to gazette a Workplace Relations Fact Sheet setting out information about the Australian Fair Pay and Conditions Standard, protected award conditions, the Fairness Test and the roles of the Workplace Authority Director and the Workplace Ombudsman. Employers are required to provide each employee with a copy of the Fact Sheet. The Regulations also extend to Victorian referral employers the obligation to provide the Workplace Relations Fact Sheet to their employees.

The Regulations would also make amendments consequential on the creation of the Workplace Authority. For example replacing all references to “Employment Advocate” with “Workplace Authority Director”.

Details of the Regulations are set out in the Attachment.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Schedule 1 to the Regulations is taken to commence on 1 July 2007.

## ATTACHMENT

### **Details of the *Workplace Relations Amendment Regulations 2007 (No. 2)***

#### **Regulation 1 – Name of Regulations**

This Regulation provides that the title of the Regulations is the *Workplace Relations Amendment Regulations 2007 (No. 2)*.

#### **Regulation 2 – Commencement**

This Regulation provides for the Regulations to commence on 1 July 2007.

#### **Regulation 3 – Amendment of *Workplace Relations Amendment Regulations 2006***

This Regulation provides that the *Workplace Relations Regulations 2006* are to be amended as set out in Schedule 1.

#### **Schedule 1 – Amendments**

##### **Item [1] – Chapter 2, Part 5, heading**

Item [1] inserts a new heading for Chapter 2, Part 5, to replace the reference to the Employment Advocate with the Workplace Authority Director.

This amendment is consequential on the creation of a statutory office of the Workplace Authority Director.

##### **Item [2] – Chapter 2, Part 5, Division 1**

Items [2] would omit Chapter 2, Part 5 Division 1 which sets out what information and copies of documents may be given to the Minister. This is a consequence of broader changes to the institutional framework following the creation of the Workplace Authority Director.

##### **Item [3] – Chapter 2, Part 5, Division 2, heading**

Item [3] inserts a new heading for Chapter 2, Part 5, to replace the reference to the Employment Advocate with the Workplace Authority Director.

This amendment is consequential on the creation of a statutory office of the Workplace Authority Director.

##### **Item [4] – Chapter 2, regulation 5.2**

Item [4] amends regulation 5.2 to replace the references to subsection 157(2) and the Employment Advocate with references to subsection 151B(2) and the Workplace Authority Director. This amendment is consequential on the creation of the new statutory office of the Workplace Authority Director.

**Item [5] – Chapter 2, Part 5, Division 3, heading**

Item [5] inserts a new heading, consequential on amendments to the Act.

**Item [6] – Chapter 2, regulation 5.3**

Item [6] replaces a section reference, consequential on amendments to the Act.

**Item [7] – Chapter 2, Part 5, regulations 5.4 and 5.5**

**Item [7]** repeals existing regulation 5.4. This is consequential on item [8] which consolidates the disclosure of information regulations for workplace agreement officials.

Item [7] also repeals existing regulation 5.5. This is consequential on item [8] which consolidates the disclosure of information regulations for workplace agreement officials.

**Item [8] – Chapter 2, Part 5, after Division 3**

Item [8] inserts a new Regulation 5.6 setting out when workplace agreements officials may disclose information acquired by them in the course of exercising their powers or performing their functions under subsection 164A(5) and paragraph 165(1)(e) of the Act.

Regulation 5.6 allows a workplace agreement official to disclosure prescribed information to:

- a Minister; or
- the Secretary; or
- an SES employee or an APS employee performing duties in the Department for a prescribed purpose.

Proposed subregulation (3) prescribes the information that may be disclosed to a person prescribed as information:

- acquired by them in the course of exercising powers, or performing functions as a workplace agreement official;
- previously been disclosed to the public in a way that did not contravene the Act or the regulations made under the Act; or
- relating to a proceeding initiated by a workplace inspector.

Subregulation (4) sets out the purposes for which information may be disclosed.

The first purpose is to allow a person to brief or consider briefing a Minister to assist the Minister:

- to consider a complaint or issue raised with the Minister by or on behalf of a person (in writing or orally) and to respond to that person in relation to the complaint or issue; or
- in relation to a meeting or other event that the Minister is to attend; or
- regarding an issue that has been raised publicly or is proposed to be raised publicly by or on behalf of the person to assist the Minister to respond to the issue.
- in relation to an error or delay on the part of the Workplace Authority; or

- in relation to an instance of an anomalous or unusual operation of Commonwealth workplace relations legislation (including the *Building and Construction Industry Improvement Act* and Schedule 1 to the Act).

The second purpose is to disclose to a person prescribed in subregulation (2), information about a matter that has previously been disclosed to the public. This subregulation makes it clear that the initial disclosure of information to the public must not have been done in contravention of the Act or the *Workplace Relations Regulations 2006*.

The third purpose is to disclose to a person prescribed in subregulation (2), information about a proceeding initiated by a workplace inspector.

This item also inserts a legislative note underneath regulation 5.6 reminding readers that despite the new regulation, subsection 164A(7) of the Act makes it clear that a workplace agreement official is not authorised to disclose to the Minister information relating to:

- (a) a decision under Division 5A of Part 8 of the Act whether a particular workplace agreement passes the fairness test; or
- (b) whether that Division requires the Workplace Authority Director to decide whether a particular workplace agreement passes the fairness test.

**Item [9] – Chapter 2, Part 6, after sub-subparagraph 6.2(1)(b)(i)(E)**

Item [9] inserts a new sub-subparagraph to clarify that workplace inspectors can provide advice about the rights and obligations in relation to all instruments given effect to by the Act.

**Item [10] – Chapter 2, Part 6, after paragraph 6.3(1)(e)**

Item [10] inserts a new paragraph to clarify that workplace inspectors can provide a notification for a failure to observe a requirement imposed by any instrument which is given effect to by the Act.

**Item [11] – Chapter 2, Part 6, regulation 6.4**

Item [11] repeals existing regulation 6.4 which relates to the form of identity cards for workplace inspectors. This is consequential on an amendment to subsection 168U of the Act that allows the Workplace Ombudsman to determine the form of identity cards.

This item also inserts a new Regulation 6.4 to make it a function of a workplace inspector to investigate alleged breaches of section 34 of the *Independent Contractors Act 2006* (the IC Act). This provision would be authorised by subsection 167(5) of the Act which allows additional functions to be conferred on workplace inspectors by regulations made under that Act.

By conferring this new function on workplace inspectors, the investigation of alleged breaches of section 34 of the IC Act would become a purpose (under subsection 169(1) of the Act) for which inspectors may exercise their investigative powers under subsection 169(2) of the Act. In effect, this new regulation would give workplace inspectors greater authority to ensure compliance with section 34 of the IC Act.

This item also inserts a legislative note underneath the new provision explaining the effect of section 34 of the IC Act. This note would provide that section 34 prohibits a person from engaging in certain coercive conduct which is intended to influence another person to sign, or not sign, a reform opt-in agreement under the transitional provisions in Part 5 of the IC Act.

#### **Item [12] – Chapter 2, Part 6, regulation 6.6**

Item [12] replaces existing regulation 6.6 with a new regulation 6.6 setting out when a member of the Office of the Workplace Ombudsman may disclose information acquired by them in the course of exercising their powers or performing their functions under subsection 166U(3) and paragraph 165(1)(e) of the Act.

The new regulation 6.6 allows a member of the Office of the Workplace Ombudsman to disclose prescribed information to:

- a Minister; or
- the Secretary; or
- an SES employee or an APS employee performing duties in the Department for a prescribed purpose.

Subregulation (3) prescribes the information that may be disclosed to a person prescribed as information:

- acquired by them in the course of exercising powers, or performing functions as a workplace agreement official;
- previously been disclosed to the public in a way that did not contravene the Act or the regulations made under the Act; or
- relating to a proceeding initiated by a workplace inspector.

Subregulation (4) sets out the purposes for which information may be disclosed.

The first purpose is to allow a person to brief or consider briefing a Minister to assist the Minister:

- to consider a complaint or issue raised with the Minister by or on behalf of a person (in writing or orally) and to respond to that person in relation to the complaint or issue; or
- in relation to a meeting or other event that the Minister is to attend; or
- regarding an issue that has been raised publicly or is proposed to be raised publicly by or on behalf of the person to assist the Minister to respond to the issue.
- in relation to an error or delay on the part of the Workplace Authority; or
- in relation to an instance of an anomalous or unusual operation of Commonwealth workplace relations legislation (including the *Building and Construction Industry Improvement Act* and Schedule 1 to the Act).

The second purpose is to disclose to a person prescribed in subregulation (2), information about a matter that has previously been disclosed to the public. This subregulation makes it clear that the initial disclosure of information to the public must not have been done in contravention of the Act or the *Workplace Relations Regulations 2006*.

The third purpose is to disclose to a person prescribed in subregulation (2), information about a proceeding initiated by a workplace inspector.

**Item [13] – Chapter 2, after regulation 21.3**

Item [13] extends the effect of Division 3A of the Act, which deals with the requirement to provide Workplace Relations Fact Sheets, to Victorian referral employers and their employees.

**Item [14] – Schedules 5 and 6**

Item [14] would omit Schedule 5. This is consequential on item [2] which omitted regulation 5.1, dealing with information and copies of documents that can be provided to the Minister.

Item [14] would also omit Schedule 6. This is consequential on item [11] which no longer requires the identity card to be prescribed under the Regulations.

**Item [15] – Further amendments**

Item [15] sets out a table of amendments that replace all remaining references to the Employment Advocate with the Workplace Authority Director. Each amendment is consequential on the creation of the new statutory office of the Workplace Authority Director to replace the Employment Advocate.